

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:

Amendment of Section 73.202,
Table of Allotments,
FM Broadcast Stations,
(Albemarle and Indian Trail,
North Carolina)

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MM Docket No. 99-240
RM-9503

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

COMMENTS IN OPPOSITION TO PROPOSED RULEMAKING

MONROE BROADCASTING COMPANY, INC.

By:

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August 23, 1999

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COMMENTS IN OPPOSITION TO PROPOSED RULEMAKING

Monroe Broadcasting Company, Inc. ("MBC"), licensee of Station WIXE(AM), Monroe, N.C., by its counsel, pursuant to 47 C.F.R. 1.415 and 1.420, hereby submits its comments in opposition to the above-captioned proposed rulemaking. Susquehanna Radio Corp. ("SRC"), the licensee of Station WABZ(FM), Channel 265A, Albemarle, N.C., requests the reallocation of its channel to Indian Trail, N.C., pursuant to 47 C.F.R. 1.420 (i), as that community's first local aural service. SRC states that it will reapply for Channel 265A if reallocated to Indian Trail. In opposition to the proposed rulemaking, MBC submits the following comments.

Indian Trail is Not a Preferred Community under Section 307(b)

In Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990), the Commission determined that any change of community must be consistent with the policies underlying Section 307(b). Id., 5 FCC Rcd at 7095-7096, para. 11. Indeed, the question of whether the amended allotment would result in a preferred distribution of facilities under Section 307(b) will serve as a "threshold test of the acceptability of the proposal to change communities. Id., 4 FCC Rcd at 4874, para. 28.

The Commission stated that it would "carefully monitor" any proposal which would result in a shift of a channel from an underserved rural area to a well-served urban area. It does not intend to "blindly apply" the first local service preference where there

would be such a reallocation and allow an artificial or purely technical manipulation of Section 307(b). The Commission will look behind claims of a first local service in a metro area. Id., 4 FCC Rcd at 4873, para. 27; 5 FCC Rcd at 7096, paras. 12-14.

Albemarle is located in an isolated and rural area some 40 miles from Charlotte. Not only is Indian Trail (pop. 1,942) located in the Charlotte MSA and less than 10 miles (southeast) from Charlotte and adjacent to urbanized Mecklenburg County, it is also located in the Monroe radio market. Indian Trail is centered 10 miles northwest of the center of Monroe (pop. 20,600), while the incorporated areas of the two communities are almost contiguous. Both communities are located in Union County.

Monroe is the county seat and dominant community in Union County. Three radio stations are licensed to Monroe. They are Stations WIXE(AM), WKRE(AM), and WDEX(AM). The latter station is a Class B with 2.5 kw service both daytime and nighttime. Monroe is located just outside the Charlotte MSA and it has a radio market (or sub-market) distinct from Charlotte.

The proposed tower site for Station WABZ(FM) is 6.2 miles (10 km.) northeast of Indian Trail. Thus, as a result of the proposed Indian Trail station's close proximity to Monroe, its protected 70 dBu signal contour would encompass and serve all of that community and most of Union County.

Indian Trail is highly dependent upon or interdependent with Monroe. This dependence is demonstrated as follows.

(1) The Extent to Which Indian Trail Residents Work in Monroe

According to data submitted by SRC, only 11.3% of the residents of Indian Trail work in that community, while 10.9% work elsewhere in Union County. Because Monroe is the closest community to Indian Trail in Union County and the economic and business center of that county, it must be presumed that those persons work in or adjacent to Monroe.

(2) Whether Indian Trail has it Own Media or is Served by Monroe

According to data submitted by SRC, Indian Trail is served by the Monroe Enquirer Journal and by Cablevision of Monroe. SRC did not disclose that Indian Trail is also served by Stations WIXE(AM), WKRE(AM), and WDEX(AM), which are licensed to Monroe.

(3) Whether Indian Trail Perceives Itself to be a part of Monroe

According to data submitted by SRC, Indian Trail has recently annexed much land and population (approximately 4,000 persons) in close proximity to Monroe. The growth of both Indian Trail and Monroe is toward each other.

(4) Whether Indian Trail has its Own Local Government

According to data submitted by SRC, although Indian Trail is an incorporated community, its water and sewer services are provided by the Union County Public Works (located in Monroe which is the county seat).

(5) Whether Indian Trail has its Own Telephone Book

According to data submitted by SRC, Indian Trail telephone listings are included in a large metro area telephone book, which includes both Charlotte and Monroe.

(6) Whether Indian Trail has its Own Commercial Establishments

Although Indian Trail has its own commercial establishments, it is located adjacent to Monroe, which is the commercial, economic and business center of Union County.

(7) The Extent that Indian Trail is Part of the Monroe Ad Market

According to data submitted by SRC, Indian Trail is wholly dependent upon the Monroe Enquirer Journal and Cablevision of Monroe for local advertising and thus is an integral part of the Monroe advertising market. SRC did not disclose that Indian Trail is also served by Stations WIXE(AM), WKRE(AM), and WDEX(AM), which are licensed to Monroe.

(8) The Extent that Indian Trail Relies Upon Monroe for Services

According to data submitted by SRC, Indian Trail relies wholly upon Union County for municipal services. The Union County government, located in Monroe, provides police and fire protection, water and sewage services, library services, and operates the public schools.

Conclusions

Based upon the criteria in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), SRC has not established that Indian Trail is a community independent of Monroe and thus eligible for a first local service preference under Section 307(b). In its strained effort to show that Indian Trail is independent of nearby urban Charlotte, SRC admitted to the interdependence of Indian Trail with Monroe. Thus, the proposed reallocation should be considered as a fourth local service and a second full-time service to Monroe.

Under the FM allotment priorities, an additional local service to Monroe would implicate only allotment priority category (4), which is "other public interest factors" and which is the lowest priority. In Change of Community, 5 FCC Rcd at 7095-7096, paras. 11-12, the Commission determined that it would not allow FM priority category (4), or "other public interest factors" to be used to undermine Section 307(b) to allow a migration from rural to well-served urban areas.

Ravenswood and Elizabeth, West Virginia, 10 FCC Rcd 3181, paras. 3-4 (1995), holds that a proposal which would reduce or eliminate signal degradation and technical problems would not, standing alone, justify a reallocation. It must also be shown that the reallocation would result in a preferential arrangement under Section 307 (b).

Chillicothe, Forest, Lima, New Washington, Peebles, and Reynoldsburg, Ohio, 12 FCC Rcd 13710, 13715, para. 13 (1996), recon. dismissed, rel. Jan. 15, 1999, is in accord. It holds that the fact that a proposed reallocation would reduce or eliminate short-spacings, even without creating new short-spacings to previously unaffected stations, is not sufficient by itself to warrant a grant.

LaGrange and Rollingwood, Texas, 10 FCC Rcd 3337, 3338, paras. 6-7 (1994), holds that the loss of the only full-time local service to a community must be considered under FM allotment category 4 ("other public interest factors"). Here, Albemarle would lose its only full-time local service. The other two stations are AM with

nominal nighttime power of no more than 0.064 kw.

LaGrange, id., at 3338, para. 6, also holds that reception service gains in already well-served urban areas would be given little or no weight. Here, the reception service gains proposed by SRC are in the well-served Charlotte and Monroe radio markets.

In the notice of proposed rulemaking, at para. 7, SRC requested that the minimum distance separation requirements be waived in order to accommodate its proposed reallocation to Indian Trail. This waiver would be with respect to a 28.1 km. short-spacing to Channel 266C, Burlington, N.C.

In Change of Community, 4 FCC Rcd at 4874, para. 27, the Commission stated that the minimum distance separation requirements would act as a natural barrier to prevent rural stations from migrating and clustering in or near urban areas. Thus, the waiver of the minimum distance separation requirements, as requested by SRC, would wholly undermine and eviscerate the Commission's policy rationale for allowing a change of community --- that the minimum distance separation requirements are the best defense to prevent a migration to urban areas and thus must remain inviolate.

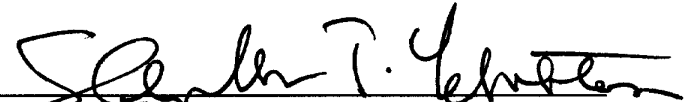
Accordingly, the proposal of SRC to reallocate Channel 265A from isolated and rural Albemarle to suburbanized Indian Trail must be rejected. Indian Trail is a suburban community wedged between urban Charlotte and Monroe (and interdependent with both) and is located in both the Charlotte and Monroe radio markets. It is already well-served with a plethora of stations from both markets, while isolated and rural Albemarle would lose its only full-time

local service. Moreover, the proposed reallocation would require a waiver of the minimum distance separation requirements that is impermissible under the Commission's Change of Community policies. Therefore, the objectives and policies of Section 307(b) and other Commission policies and rules would not be served by such a reallocation and would in fact be undermined.

WHEREFORE, in view of the foregoing, the proposed rulemaking must be rejected as inconsistent with Commission policies and rules.

Respectfully submitted,

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August 23, 1999

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney at law admitted to practice in the District of Columbia, hereby certifies that on the 23rd day of August, I have caused to be mailed, U.S. Mail, postage pre-paid, a copy of the "Comments in Opposition to Proposed Rulemaking" filed by Monroe Broadcasting Company, Inc., to the following persons or parties:

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